

No. 8825-3Lab-67 28409.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and management of M/s Ganpat Rai Matri Seva Sadan, Bhiwani.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK  
Reference No. 38 of 1967

between  
THE WORKMEN AND THE MANAGEMENT OF M/S GANPAT RAI MATRI SEVA SADAN,  
BHIWANI

Present.—Shrimati Meera claimant in person.  
Shri Murli Dhar Secretary of the respondent hospital.

#### AWARD

The claimant Shrimati Meera was employed as a cook and was preparing the meals of nurse students who were received training under the Auxiliary Nurse-Midwives Training Centre financed by the Central Government. Smt. Meera has been dismissed from service and she is aggrieved by her dismissal and this raised an industrial dispute. The Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute to this Court for adjudication—vide Government Gazette notification No. 176-SF-III-Lab-67, dated 7th April, 1967 :—

Whether the termination of the services of Shrimati Meera, Cook is justified and in order? If not, to what relief she is entitled?

The parties have compromised. Shrimati Meera Claimant has received a sum of Rs 1,500 in the presence of this Court from the respondent in full and final settlement of her claim regarding her alleged wrongful dismissal. Now there is no dispute left between the parties and the demand of the claimant for reinstatement with full back wages have been withdrawn. I therefore, give my award accordingly.

P.N. THUKRAL,  
Presiding Officer,  
Labour Court, Rohtak.

Dated the 11th September, 1967.

No. 1231, dated the 12th September, 1967

This award is submitted in quadruplicate to the Secretary to Government, Haryana, Labour and employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,  
Presiding Officer,  
Labour Court, Rohtak.

No. 8899-3Lab-67/28411.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Rohtak-Haryana Transporters (P) Ltd., Rohtak.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK  
Reference No. 7 of 1967

between  
THE WORKMEN AND THE MANAGEMENT OF M/S ROHTAK HARYANA TRANSPORTERS  
(P) LTD., ROHTAK

Present.—Shri Umed Singh claimant with Shri S.N. Vats.  
Sarvshri Chanchil Singh and Sat Narain Sharma for the management.

#### AWARD

Shri Umed Singh claimant was in the service of M/s Rohtak Haryana Transporters (P) Ltd., Rohtak and he was working as a conductor. On 6th March, 1966 he was coming in Bus No. PNW 6039 which left Kharkhoda at 10-20 a.m. for Sasana. Shri Siv Lal was the driver of the bus. It reached Sasana at 11-20 a.m. The case of the management is that the bus was checked by Shri Hari Ram, checker as soon it reached Sasana and eight passengers travelling from Kharkhoda to Sasana were found without tickets though they had paid the fare. The claimant being the conductor was asked to explain why the passengers were without tickets, but he stated that a report may be made to the management. There upon the checker issued ticket No. 57191 of the value of Rs 2 to those eight passengers and made a complaint to the management that the claimant had taken the fare from eight passengers but did not issue them necessary tickets and attempted to misappropriate the amount. The claimant Shri Umed Singh was charge-sheeted and after necessary enquiry was dismissed from service. The claimant maintains that his dismissal was illegal. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred on them by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947 referred the following dispute to this Court for adjudication,—vide gazette notification No. 41-SF-III-Lab-67 2079, dated 20th January, 1967 :—

“Whether the action of the management in terminating the services of Shri Umed Singh was justified and in order? If not, to what relief the workman is entitled?”

On receipt of the reference a notice was issued to workman to file his statement of claim and to the management to file their written statement. The workman in his statement of claim has pleaded that no proper enquiry was made against him in as much as the Enquiry Officer did not hold the enquiry in his presence nor did he give him any opportunity to cross-examine the witnesses produced on behalf of the management nor the defence witnesses were taken. It is alleged that the Enquiry Officer was neither independent nor impartial and that the claimant Shri Umed Singh was dismissed from service due to his trade union activities as he was an active member of Shri Haryana Motor Transport Workers Union, Regd., Rohtak.

The management in their written statement maintain that the claimant had in fact attempted to misappropriate a sum of Rs 2 which he had collected as fare from eight passengers travelling in the Bus No. PNW 6039 from Kharkhoda to Sasana on 6th March, 1966 because he did not issue them any ticket. It is alleged that a regular enquiry was held against the claimant. He was present when the enquiry began and was assisted by the representative of his choice. He participated in the inquiry and he was never denied any opportunity to cross-examine the witnesses produced on behalf of the management and to produce his defence. It is alleged that during the course of the enquiry the claimant adopted a non-cooperative attitude and so the enquiry had to proceed *ex parte*. After the conclusion of the enquiry he was supplied with a copy of the enquiry report along with the observations of the Managing Director and the final order was duly communicated to him. So the removal of the claimant from service was based on proper enquiry and is justified. My learned predecessor Shri Hans Raj Gupta framed the following issues :—

- (1) Whether the claimant Shri Umed Singh has been dismissed on account of his trade union activities ?
- (2) Whether the inquiry held by the management against Shri Umed Singh is not valid and proper on the grounds mentioned in the statement of claim, dated 7th March, 1967 of the workman ?
- (3) If issues Nos. 1 and 2 are decided against the management, whether the action in terminating the services of Shri Umed Singh is justified and in order ?
- (4) Relief.

The parties have produced their evidence and I have their representatives. Issues Nos. 1 and 3 are to some extent connected and I will discuss them together. I will first deal with issue No. 2 which is of a preliminary nature and then give my findings on issues Nos. 1 and 3.

**Issue No. 2.**—The domestic enquiry against the claimant Shri Umed Singh was held by Shri Hari Ram, Cashier of the respondent company. I have carefully considered the evidence of the Inquiry Officer and I have gone through the record of the inquiry held by him and in my opinion this inquiry cannot be held to be binding on the claimant from the very start the Inquiry Officer never inspired any confidence in the claimant and a misunderstanding arose between them as soon as the inquiry began. The claimant wrote a letter, dated 5th August, 1966 Ex. RP/6 to the Inquiry Officer in which he requested him that his presence be recorded and the procedure to be followed in the enquiry be intimated to him. He also prayed that he may be allowed to be represented by Shri Shiv Narain Vats, Secretary of the Union. On that very day he addressed another letter Ex. RP 7 to the Inquiry Officer complaining that though he had appeared before him on 5th August, 1966 yet no proceedings were taken in his presence and he was asked to go away and the next date fixed would be intimated to him. On the other hand the Inquiry Officer wrote a letter Ex. RP 8, dated 12th August, 1966 to the claimant in which it was stated that the claimant along with his representative Shri Shiv Narain Vats was present on 5th August, 1966 and had gone away after cross-examining Shri Hari Ram witness who had appeared on behalf of the management. The claimant was informed that in his absence the evidence of four witnesses had been recorded and in case he wanted to cross-examine them they would be resummoned for 18th August, 1966 for the purpose of cross-examination. This letter was sent to the claimant by registered post and the postal acknowledgement receipt is Ex. RP 9. The claimant wrote a letter Ex. RP 10 in reply. He controverted the assertion of the Inquiry Officer that his representative Shri Shiv Narain Vats was present with him on 5th August, 1966 and both of them had left when the enquiry was going on. He reaffirmed in his letter that he was asked to go away with the promise that the next date of hearing would be intimated to him. The claimant expressed resentment at the attitude of the Inquiry Officer and said that he would like to cross-examine the witnesses. In reply to this letter the Inquiry Officer informed the claimant *vide* his letter Ex. RP/11 dated 2nd September, 1966 that the witnesses would be re-called for 10th September, 1966 for purpose of cross-examination. The claimant appeared in office of the Inquiry Officer on 10th September, 1966 at 10-00 a.m. and gave a writing Ex. RP 10 praying that his presence be recorded and he may be given a list of the witnesses who will be examined on behalf of the management. The Inquiry Officer wrote a letter Ex. RP/13 dated 26th September, 1966 informing him that he had to go on leave on 11th September, 1966 and that the next date fixed for the enquiry was 4th October, 1966. There is a note under this letter that the claimant had refused to accept this letter and so it was being sent under registered cover. On 4th October, 1966 the worker wrote a letter Ex. RP 14 to the Inquiry Officer in which he stated that he had appeared before him in his office on that date at 12-00 noon with his defence witnesses. He complained that the evidence of the witnesses of the management had not been recorded in his presence and that even the list of the names of the witnesses had not been supplied to him. He requested that a copy of the statement of the witnesses be supplied to him and that he wished to cross-examine those witnesses. He further complained that the Inquiry Officer had threatened him and his representative Shri Shiv Narain Vats and had told him that it would be better if the claimant resigned. The claimant, therefore, asserted that he had no confidence in the Inquiry Officer and again requested that he may be supplied with a copy of the documents which had been prepared in his absence. From this correspondence it is clear that either the claimant was not co-operating with the Inquiry Officer or that the Inquiry Officer was not playing fair. At any rate this is not an enquiry in which the claimant participated.

The report of the Inquiry Officer is Ex. RP 17. In this report a number of documents have been referred to which have been marked M1, M2 and so on. The Inquiry Officer is just a Cashier in the respondent concern and has passed the middle class examination. He says that he does not know English at all. He was asked to explain what did he mean by writing the letters Ex. M1, Ma, Mb, Mc and so on the Inquiry Officer explained that Shri Sat Narain, Head Clerk of the respondent concern was present with him when he wrote his report and the letters Ex. Ma, etc., were written at the instance of Shri Sat Narain. The witness was then asked if he now understood what these words stand for but he vaguely replied that these letters indicated some documents. From the type of replies given by the witness it is clear that the report was not written by him independently and it was written with the assistance of the Head Clerk of the respondent company and after carefully considering all the circumstances I am of the opinion that it would not be safe to uphold the dismissal of the worker on the basis of the findings of the Inquiry Officer. Issue No. 2 is, therefore, found in favour of the claimant.

**Issues Nos. 1 and 3.**—The next question for determination is whether the claimant was in fact guilty of an attempt to misappropriate a sum of Rs 2 which he had realised from eight passengers who had got into the bus at Kharkhoda Bus Stand for going to Sasana and to whom no tickets had been issued or whether the claimant had been victimised by reason of his trade union activities. We have already seen the allegations which have been made by the management against the claimant. These allegations are supported by the evidence of the Checker Shri Hari Ram who has been examined as M.W. 1 and by Shri Shiv Lal the driver of the bus. The fact that the claimant had not issued any tickets to the eight passengers who had got into the bus at Kharkhoda for the purpose of going to Sasana and had realised the bus fare from them and the ticket was issued by the Checker Shri Hari Ram is not even denied by the claimant. The version of the claimant which he has given for the first time during the course of his evidence in Court on 24th August, 1967 is that the Checker Shri Hari Ram was already in the bus when it started

from Sonapat. The claimant says that as a matter of fact Shri Hari Ram met him on 6th March, 1966 at Sonapat and travelled with him in the bus for going to Rohtak. The claimant says that a large number of passengers got into the bus at Kharkhoda and he wanted the bus to wait till the tickets to all the passengers were issued but Shri Hari Ram Checker told him that the bus should not be delayed because another bus was following them and he assured him that he would assist him in issuing the tickets. The claimant says that when the bus was about half a mile from Sasana he told Shri Hari Ram that the next station was approaching and it had not been possible for him to issue tickets to all the passengers, upon which Shri Hari Ram asked him to hand over the blank ticket book to him and that he should collect the fare from the passengers while he would issue the tickets to them. According to the claimant there was no surprise checking by Shri Hari Ram Checker when the bus reached at Sasana as stated by him and he has been falsely charged by reason of his trade union activities. The claimant had produced two passengers namely Kher Singh and Hari Kishan in support of his defence version. According to the worker these passengers were travelling in the bus. They have been examined as W.W. 5 and W.W. 6 and they have supported the defence version.

I have carefully considered the evidence of the Checker Shri Hari Ram and the driver Shri Shiv Lal who support the version of the management and that of the worker Umed Singh and his two witnesses Kher Singh and Hari Kishan and in my opinion the defence version does not appear to be correct and the charge of attempted misappropriation of Rs 2 by the conductor is satisfactorily proved. The defence version as given by the worker is wholly un-natural, and the witnesses who have appeared in support of his version do not appear to be speaking the truth. In case the conscience of the worker was clear and the version which he has given for the first time in the Court on 24th August, 1967 had been correct he would have given this version to the management the moment the alleged false charge was brought upon him. On the contrary we find that the worker has been trying to take shelter behind technical pleas from the very beginning. The Checker Shri Hari Ram in his report which he submitted to the management regarding the attempted misappropriation on the next day, i.e., 7th March, 1966 by mistake used the word "Aaj" (to-day). When the worker was asked to submit his explanation on the basis of this report he took shelter behind the technical plea that the charge against him was false because on 7th March, 1966 he was not on duty but was on rest. The management then obtained a clarification from the Checker Shri Hari Ram who stated that he had used the word "Aaj" (to-day) in his report by mistake and that the incident took place on 6th March, 1967. When the revised charge-sheet was given to the worker he simply stated that the charge against him was false and he never came out with his version which has now been given in the Court. His representative has explained that the worker was afraid of disclosing the name of his witnesses to the management on account of fear that pressure may not be brought upon them and the claimant was innocent and did not know that he should have come out with his version in the very first instance. There is no substance in any of these contentions. According to the version of the claimant he had taken his witnesses before the Inquiry Officer but their evidence was not recorded. So the claimant never wanted to keep the names of these witnesses secret. Secondly according to the evidence of the defence witnesses Shri Hari Ram Checker had already approached them with a request that they should support the version of the management but they had refused to do so. It is rather strange that Shri Hari Ram Checker should have tried to approach only those passengers (out of the 53½ passengers) who have come forward to support the defence version. Shri Kher Singh witness belongs to the same village to which the claimant belongs and is his distant agnate. Shri Kher Singh claims that the Checker Shri Hari Ram was on friendly terms with him and he used to eat and drink with him. In my opinion it is not possible to rely upon the evidence of this witness. He claims that he was coming to Rohtak on 6th March, 1966 for the purpose of booking a picture which was running in Subash Talkies at Rohtak but he could not get it because the picture was extended. He was asked during his cross-examination if he had any documentary proof to show that he had come to Rohtak on 6th March, 1967 but the witness could not produce any. In case the witness had really come to Rohtak on 6th March, 1967 for the purpose of booking a picture he must have done some correspondence previously. Moreover persons usually do not travel on business on a festival like Holi. In my opinion, therefore, the evidence of Shri Kher Singh W.W. 5 that he was travelling in the bus which left Sonapat at 10-20 a.m. on 6th March, 1967 is extremely doubtful. The evidence of the claimant also does not carry conviction to my mind. He wants the Court to believe that when the bus reached Kharkhoda and was over-crowded he did not wish to start the bus till tickets were issued to all the passengers but he agreed to do so on the assurance given by Shri Hari Ram that he would assist him in issuing the tickets. This evidence is not convincing. The position taken up by the claimant is that the Checker Shri Hari Ram is closely related to the Managing Director Smt. Bhagwati, and in those days he was not even working as checker but was put on general duty in the office and that he did checking only when he wanted to falsely involve any employee of the company. If that was so the claimant should have been on his guard and should have not relied upon the promise of Shri Hari Ram that he would assist him in issuing the tickets *en-route*. Secondly evidence has been produced by the claimant to show that it is the duty of the checker to help the conductor whenever there is a rush. If that was so and the claimant had then no reason to suspect that the checker would play foul with him and there was no reason for him to insist that he would not start the bus till he had issued the tickets to all the passengers because as stated by him it is the duty of the checker to help the conductor in issuing the tickets whenever there is a rush and the conductor should have presumed that the checker would help in the way and it was not necessary for him to extract a promise from the checker that he would help. The defence has tried to put great emphasis on this point because Kher Singh witness also says that at Kharkhoda he wanted to get down for taking tea and that the conductor also wanted to issue the tickets but the checker Shri Hari Ram was anxious that the bus should not be delayed because there was another bus following them, but on this point both the defence witnesses contradict each other. Shri Hari Kishan says that the bus stopped at Kharkhoda for about ten minutes while Kher Singh says that the bus did not stop there much. Normally contradictions regarding the time for which a bus stops at a station is not very material but in this case the evidence of the witnesses is such that it is not possible to rely upon it. The representative of the management has also rightly pointed out that it is not possible to rely upon the evidence of Shri Hari Kishan when he says that he had travelled on the bus on 6th March, 1966 because he had no particular reason to remember this date. The witness does not remember the date on which he accompanied the worker for the purpose of appearing before the Inquiry Officer.

As regards the version of the management the representative of the worker has pointed out some minor contradictions which appear in the evidence of the Checker Hari Ram and that of the driver Shri Shiv Lal. In my opinion these contradictions are very minor. The evidence of the Checker Hari Ram is strongly corroborated by the fact that the ticket for eight passengers traveling from Kharkhoda to Sasana and marked Ex. RP/22 is in the hand of the checker himself, the voucher Ex. RP/21 in which this ticket is entered is in the hand of the conductor. There is absolutely no reason as to why this ticket should have been issued by the Checker in case the conductor had collected the fare. The excuse put forward by the conductor that there was a rush in the bus cannot help him. Only one ticket has been issued for eight passengers and if the conductor had time to collect the fare from eight passengers he could have certainly issued one ticket to them. After carefully considering all the facts of this case

I am of the opinion that the defence version as given by the conductor is not correct and that the charge of attempted mis-appropriation as levelled by the management against the conductor has been satisfactorily proved. The conductor is, therefore, not entitled to be re-instated. However, in view of the fact that the domestic enquiry held against him has not been found to be fair, I direct that he should be paid his wages up to the date this award is published in the Government gazette. In the circumstances of this case the parties are left to bear their own costs of these proceedings.

Dated the 25th August, 1967.

P.N. THUKRAL,  
Presiding Officer,  
Labour Court, Rohtak.

No. 1244, dated Rohtak, the 12th September, 1967

This award is submitted in quadruplicate to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,  
Presiding Officer,  
Labour Court, Rohtak.

P. N. BHALLA,  
Secretary to Government, Haryana, Labour  
and Employment Departments.